

32426
EB

SERVICE DATE – DECEMBER 27, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34140

LAKE MICHIGAN & INDIANA RAILROAD COMPANY LLC—
ACQUISITION AND OPERATION EXEMPTION—
KEYSTONE RAILROAD, INC.

[REQUEST FOR WAIVER OF 49 CFR 1150.32(e)]

Decided: December 26, 2001

By request filed December 18, 2001, Lake Michigan & Indiana Railroad Company LLC (Applicant) seeks waiver of the requirements of 49 CFR 1150.32(e) to permit the exemption it is seeking in this proceeding to become effective without providing the 60-day advance notice to the employees on the affected rail line and to the national offices of the labor unions of those employees.¹ The request will be granted.

On December 18, 2001, Applicant filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate a 66-mile rail line in Burns Harbor, IN, previously leased by its corporate affiliate Keystone Railroad, Inc. (Keystone).² As a result of this and other proposed transactions, the separate existence of Keystone will cease and Applicant will be the surviving entity and continue the Burns Harbor operations formerly provided by Keystone.

¹ Under 49 CFR 1150.32(e), “If the projected annual revenue of the rail lines to be acquired or operated, together with the acquiring carrier’s projected annual revenue, exceeds \$5 million, the applicant must, at least 60 days before the exemption becomes effective, post a notice of applicant’s intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so.”

² According to the request, both Applicant and Keystone are wholly owned subsidiaries of Bethlehem Steel Corporation (BSC). Applicant is a newly formed limited liability company formed by BSC for the sole purpose of merging part of Keystone into Applicant for tax purposes.

In its filing, Applicant requests that the Board waive the 60-day notice requirements as to this transaction, which has previously been consummated. Applicant states that it originally believed that the transaction could be handled through only a corporate family transaction exemption under 49 U.S.C. 11323, and that it filed a notice for a corporate family transaction exemption in STB Finance Docket No. 34101.³ After discussion with Board staff, Applicant was informed that an exemption from the requirements of 49 U.S.C. 10901 was also required. Because no advance notice to labor is required in connection with corporate family transaction exemptions, Applicant did not provide any notices to labor in advance of the filing of its notices of exemption or in advance of its commencement of operations. Applicant indicates that the transaction was simply a change in the legal form of one of BSC's subsidiary railroads, and that there will be no changes in operations, bargaining agreements, or personnel. Applicant suggests that, under the circumstances of this transaction, compliance with the notice requirements of 49 CFR 1150.32(e) would not further the purposes of the rule and should be waived.

The purpose of 49 CFR 1150.32(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation.⁴ The Board takes seriously the requirements of the rule and cautions Applicant to be alert to compliance with those requirements. While we ordinarily do not grant waivers of the employee notice requirement, the record here reflects that there will be no adverse impact on the personnel of Keystone.⁵ We will grant the waiver request, and waive the 60-day notice requirements under 49 CFR 1150.32(e) with respect to this transaction. Granting the waiver request will have the effect of making the exemption for the acquisition and operation transaction in this proceeding effective on the service date of this decision.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Applicant's request is granted.

³ See Bethlehem Steel Corporation, Keystone Railroad Inc., and Lake Michigan & Indiana Railroad Company LLC—Corporate Family Transaction Exemption, STB Finance Docket No. 34101 (STB served and published (66 FR 54058-59) on Oct. 25, 2001).

⁴ See Acq. of R. Lines Under 49 U.S.C. 10901 & 10902 – Advance Notice, 2 S.T.B. 592 (1997).

⁵ No opposition to the request has been filed at the Board.

2. This decision is effective on its service date.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary